



**U.S. Citizenship  
and Immigration  
Services**

Non-Precedent Decision of the  
Administrative Appeals Office

In Re: 16915341

Date: SEP. 28, 2021

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, a post-doctoral research associate, seeks second preference immigrant classification as an individual of exceptional ability in the sciences, arts or business, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. See Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). After a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. Matter of Dhanasar, 26 I&N Dec. 884 (AAO 2016).

The Nebraska Service Center Director determined that the Petitioner qualifies for classification as an advanced degree professional and that the proposed endeavor has substantial merit and national importance. However, the Director concluded that the evidence did not establish that the Petitioner is well positioned to advance the endeavor, or that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. The Petitioner filed a motion to reopen and reconsider the Director's decision and although the Director granted motion, he ultimately determined that the Petitioner had not overcome the reasons for the denial.

On appeal, the Petitioner offers a brief and relies on evidence previously submitted to argue that he qualifies for a national interest waiver. In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon de novo review, we will dismiss the appeal.

## **I. LEGAL FRAMEWORK**

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification (emphasis added), as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this

classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

(2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

Section 101(a)(32) of the Act provides that “[t]he term ‘profession’ shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries.”

The regulation at 8 C.F.R. § 204.5(k)(2) contains the following relevant definitions:

Advanced degree means any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.

Exceptional ability in the sciences, arts, or business means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business.

Profession means one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry in the occupation.

In addition, the regulation at 8 C.F.R. § 204.5(k)(3)(ii) sets forth the specific evidentiary requirements for demonstrating eligibility as an individual of exceptional ability. A petitioner must submit

documentation that satisfies at least three of the six categories of evidence listed at 8 C.F.R. § 204.5(k)(3)(ii).

Furthermore, while neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).<sup>1</sup> *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, USCIS may, as matter of discretion,<sup>2</sup> grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national’s proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.<sup>3</sup>

## II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree. The Petitioner holds a doctorate degree in entomology, which he earned from a U.S. university in 2013. The Director found that the evidence of record established the substantial merit and national importance of the proposed endeavor. However, upon de novo review and for the reasons discussed below, we must withdraw the Director’s conclusion that the Petitioner met the national importance portion of the first prong.

At the time of filing, the Petitioner was working as a post-doctoral research associate in [redacted]’s laboratory at the University of [redacted]. In this position, the Petitioner worked on a federally funded research project to study the mechanisms through which an invasive pest insect, the [redacted], transmits the [redacted] to plants, particularly [redacted] plants. [redacted] stated that the Petitioner’s research is important to pest management programs because understanding how [redacted] negatively impact plants is critical to national biosecurity. Their research has the potential to improve crop protection and plant resistance, which could also reduce the need to use environmentally harmful pesticides and help meet the growing need to feed our population. In response to the Director’s request for evidence (RFE), the Petitioner described this research as protecting crops from pathogens and encouraging a plant’s natural defenses to ward off [redacted] attacks.

The Petitioner included evidence that he is an entomologist working at [redacted] and as such, he is geographically at the center of the United States’ crop production. In support, the Petitioner provided website information on [redacted] entomology department, what students study in an entomology degree program, and how graduates might be able to use their entomology degrees. The Petitioner also provided his employment offer letter to evidence his position within the [redacted] entomology department. While the Petitioner may work at a university with a strong research reputation, this evidence does not establish the substantial merit or national importance of the Petitioner’s proposed endeavor. Moreover, the importance of the field and what graduates can do with their degree also

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<sup>1</sup> In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm’r 1998).

<sup>2</sup> See also *Poursinav*, USCIS, 936 F.3d 868, 2019 WL 4051593 (9th Cir. 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

<sup>3</sup> See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

does not establish that the Petitioner's specific proposed endeavor qualifies under the first prong of the Dhanasar framework. In determining national importance, the relevant question is not the importance of the industry or profession in which the individual will work; instead, we focus on the "the specific endeavor that the foreign national proposes to undertake." See *Id.* at 889.

In the Petitioner's personal statement, he described that within the next two years, he hopes to accomplish the majority of the [redacted] research obligations towards the objectives of [redacted] [redacted] interactions. The Petitioner explained that the U.S. Department of Agriculture (USDA) awarded the grant funding for this project in 2018 and that the Petitioner intends to follow the project through to the completion of the stated goals. In the next two to five years, the Petitioner intends to occupy a faculty position at a tier one research university in the United States where he can conduct research on insect-pathogen-plant interactions. He stated that he will seek a research faculty position that also allows him to teach and mentor students. Beyond five years, the Petitioner hopes to achieve status as a highly regarded expert in his field, running his own research programs at a tier one research university and engaging in collaborative research with his peers from all over the world. The Petitioner's personal statement contains the bulk of the information we have concerning the Petitioner's proposed endeavor. While the Petitioner submitted numerous letters of recommendation from other researchers and academics in the field, none of the authors discussed the Petitioner's proposed future endeavor. Instead, the authors primarily focused on the Petitioner's past or current work.

In *Dhanasar*, we held that a petitioner must identify "the specific endeavor that the foreign national proposes to undertake." *Id.* at 889. Although the record contains explanations of past and current research projects, we have insufficient information concerning the Petitioner's proposed future endeavor with which to make a determination concerning its substantial merit and national importance. For instance, the Petitioner stated that within two years, he intends to complete the 2018 federal grant funded project on [redacted] interactions, after which he intends to obtain a research faculty position that includes teaching and mentoring. Here, the Petitioner has not identified how much time he will spend researching, as opposed to teaching and mentoring. This is significant, as we determined in *Dhanasar* that the petitioner's teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893.

To evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement we look to evidence documenting the "potential prospective impact" of his work. With respect to the Petitioner's teaching and mentoring, we conclude that the record does not establish by a preponderance of the evidence that such activities would impact the field of entomology or the U.S. agricultural industry more broadly, as opposed to being limited to the specific students and university he will serve. Moreover, the Petitioner has not included sufficient evidence of what specific future research projects he intends to engage in within the realm of insect-pathogen-plant interactions or the research programs he intends to run once he reaches beyond the five-year mark in his proposed endeavor. Without this information, which would inform whether the research would have a broader impact and therefore national importance, we are unable to determine whether his endeavor meets the first prong of the *Dhanasar* framework.

As evidence of the substantial merit and national importance of the Petitioner's work, he provided evidence of his research publications and that at the time of filing, his work had been cited eleven times.

While we acknowledge that evidence of the impact his past work has had provides a basis to suggest that his future work will have a similar impact, this past research acclaim does not in itself establish the national importance of the proposed endeavor. Here, the Petitioner has not identified the specific nature of his proposed future research so that we might determine its possible impact, nor has he identified how his future research will be disseminated into the scientific community such that its potential can be properly evaluated.

The Petitioner asserted that being invited to present at conferences is evidence of the impact his work has on the field. While we acknowledge the Petitioner's claims that his presentations at conferences indicate that his work has impacted the field, the record contains insufficient corroborative evidence that his ideas and teachings from these presentations have been implemented such that the broader impact of his work is established. The Petitioner's résumé references his participation in various presentation and conference activities but does not adequately describe his role in those events. We do not know, for instance, why merely attending a conference is evidence of his research's impact in the field of entomology. Further, the Petitioner has not explained whether being an "invited speaker" means that he actually presented or spoke at the conference such that his ideas were disseminated. Nor has the Petitioner explained the difference between an oral presentation and a poster presentation.

In our examination of the record, we note an extensive list of conference and presentation activities on the Petitioner résumé, but little corroborative evidence to substantiate these activities. In the initial filing, the Petitioner provided evidence that he spoke at an [redacted] 2017 [redacted] Annual Meeting in [redacted] as well as an Entomology 2017 event in [redacted] 2017 in [redacted]. The Petitioner has not provided sufficient background information for either of these events and the record does not contain sufficient detail with which to conclude that his work was implemented such that a broader impact of his work could be established. On motion, he provided evidence that as a doctoral student in 2012, he contributed to the [redacted] Annual Meeting of the [redacted] Entomological Society. While his résumé suggests that he provided an oral presentation at this event, the conference documents themselves do not state how the Petitioner contributed at the event. On motion, he also provided evidence that he orally presented at an event in [redacted] however this event occurred in [redacted] 2019, which was after the filing of the petition. In addition, the Petitioner claimed that he was invited to speak at a [redacted] 2019 event in China and that when he could not attend, [redacted] presented on his behalf. The conference document indicates, however, that [redacted] was the invited speaker. Although we acknowledge the Petitioner's résumé and other statements, the record does not include sufficient independent corroborative evidence that the Petitioner was invited to speak at this event. Moreover, the Petitioner, in fact, did not speak at this event. Even if he had, the event occurred after the petition was filed and would not constitute evidence in support of his eligibility at the time of filing.

In his RFE response concerning the first prong of the Dhanasar framework, the Petitioner provided additional letters of recommendation in order to establish the substantial merit and national importance of the Petitioner's work. However, as previously noted, none of the authors discussed the Petitioner's future work or acknowledged his proposed endeavor. Rather, the authors focused solely on the Petitioner's past or current work. As such, the letters are insufficient to support a finding of eligibility under prong one of the Dhanasar framework. Likewise, the [redacted] article, USDA research, and Wikipedia printout may support a finding that entomology relating to crop protections against pests is an important field; however, this evidence does not establish that the

Petitioner's specific proposed endeavor is of substantial merit and national importance. Again, we note that in determining national importance, the relevant question is not the importance of the industry or profession in which the individual will work; instead, we focus on the "the specific endeavor that the foreign national proposes to undertake." See Id. at 889. A June 2019 [REDACTED] letter evidenced a new offer of employment as an Assistant Project Scientist; however, this letter did not include a description of the Petitioner's proposed endeavor, nor did it indicate whether the Petitioner will only engage in research projects assigned to him by the department of entomology. Finally, the Petitioner has not explained how this employment might affect his proposed endeavor.

Overall, the record does not include sufficient information or supporting evidence identifying the specific research projects the Petitioner intends to undertake to demonstrate the nature and extent of his proposed research, how he will disseminate his research, or how the Petitioner will allocate his time given his proposed teaching and mentoring work. In determining whether an individual qualifies for a national interest waiver, we must rely on the specific proposed endeavor to determine whether (1) it has both substantial merit and national importance and (2) the foreign national is well positioned to advance it under the Dhanasar analysis. Because the Petitioner has not provided sufficient information regarding his proposed endeavor, we cannot conclude that he meets either the first or second prong, or that he has established eligibility for a national interest waiver.

### III. CONCLUSION

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.